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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JABBARI McELROY,
Plaintiff,
v.
N. ASAD, et al.,
Defendants.

No. 2:15-cv-0904-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.¹ On June 17, 2015, the court recommended that this action be dismissed because plaintiff failed to pay the filing fee or submit an application for leave to proceed in forma pauperis. ECF No. 5. Thereafter, plaintiff filed an application for leave to proceed in forma pauperis (IFP) and consented to proceed before the undersigned for all purposes. ECF Nos. 6, 7. In light of plaintiff’s IFP application, the June 17, 2015 recommendation is vacated. But as explained below, plaintiff has not demonstrated he is eligible to proceed in forma pauperis and this action must therefore be dismissed.

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¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. See E.D. Cal. Local Rules, Appx. A, at (k)(4).

1 A prisoner may not proceed in forma pauperis:

2 if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in
3 any facility, brought an action or appeal in a court of the United States that was
4 dismissed on the grounds that it is frivolous, malicious, or fails to state a claim
5 upon which relief may be granted, unless the prisoner is under imminent danger of
serious physical injury.

6 28 U.S.C. § 1915(g). Court records reflect that on at least three prior occasions, plaintiff has
7 brought actions while incarcerated that were dismissed as frivolous, malicious, or for failure to
8 state a claim upon which relief may be granted. *See* (1) *McElroy v. Gebbmedin*, No. 1:08-cv-
9 0124-LJO-GSA (E.D. Cal. Dec. 11, 2008) (order dismissing action for failure to state a claim);
10 (2) *McElroy v. Schultz*, No. 1:08-cv-0179-OWW-MJS (E.D. Cal. Apr. 30, 2010) (order
11 dismissing action for failure to state a claim); (3) *McElroy v. CDC*, 2:08-cv-0733-HWG (E.D.
12 Cal. June 3, 2009) (order dismissing action for failure to state a claim); and (4) *McElroy v.*
13 *Ground*, No. 1:13-cv-483-MJS (E.D. Cal. Nov. 1, 2013) (order dismissing action for failure to
14 state a claim). *See also* *McElroy v. Turner*, No. 2:12-cv-1182-CMK (E.D. Cal. Aug. 13, 2012)
15 (order designating plaintiff a three strikes litigant pursuant to § 1915(g)).

16 The section 1915(g) exception applies if the complaint makes a plausible allegation that
17 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
18 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). For the exception to
19 apply, the court must look to the conditions the “prisoner faced at the time the complaint was
20 filed, not at some earlier or later time.” *Andrews*, 493 F.3d at 1053, 1056 (requiring that prisoner
21 allege “an ongoing danger” to satisfy the imminency requirement). Courts need “not make an
22 overly detailed inquiry into whether the allegations qualify for the exception.” *Id.* at 1055.

23 Here, plaintiff’s allegations do not demonstrate that he suffered from an ongoing or
24 imminent danger of serious physical injury at the time he filed his complaint. *See* ECF No. 1
25 (including allegations regarding an inadequate administrative appeals process and unlawful
26 property searches and seizures). Thus, the imminent danger exception does not apply. Plaintiff’s
27 application for leave to proceed in forma pauperis must therefore be denied pursuant to § 1915(g).


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Accordingly, it is hereby ORDERED that

1. The June 17, 2015 findings and recommendations (ECF No. 5) are vacated;
2. Plaintiff's application to proceed in forma pauperis (ECF No. 7) is denied; and
3. This action is dismissed without prejudice to re-filing upon pre-payment of the \$400 filing fee.

DATED: September 23, 2015.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE